

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NSIGHT, INC.,

Plaintiff,

v.

PEOPLESOFT, INC.,

Defendant

No. C 04-3836 MMC (MEJ)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT;
DENYING PLAINTIFF'S REQUEST FOR
RECONSIDERATION; DISMISSING
STATE LAW CLAIMS WITHOUT
PREJUDICE; VACATING HEARING**

Before the Court is defendant's motion for summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, filed October 27, 2006. Plaintiff has filed opposition,¹ to which defendant has replied. Having considered the papers filed in support of and in opposition to the motion, the Court deems the matter appropriate for resolution without oral argument, VACATES the December 1, 2006 hearing, and rules as follows.

1. Defendant is entitled to judgment on the First Cause of Action, by which plaintiff alleges a claim for unlawful restraint of trade in violation of 15 U.S.C. § 1. Specifically, for the reasons stated by defendant, plaintiff has failed to raise a triable issue as to whether defendant has engaged in "concerted conduct" with another to restrain trade. See Pinhas v. Summit Health, Ltd., 894 F. 2d 1024, 1032-33 (9th Cir. 1990) (holding § 1 prohibits

¹On November 10, 2006, plaintiff, in addition to filing a document titled "Plaintiff's Opposition to Motion for Summary Judgment," filed a document titled "Motion for Contract Interpretation," which the Court construes as part of plaintiff's opposition.

1 “concerted conduct by more than one person or single entity”).

2 2. Defendant is entitled to judgment on the Third Cause of Action, by which plaintiff
3 alleges a claim for tying in violation of 15 U.S.C. § 14. Specifically, for the reasons stated
4 by defendant, plaintiff has failed to raise a triable issue as to whether defendant conditioned
5 the sale of its software and/or software upgrades upon a buyer’s purchase of defendant’s
6 consulting or implementation services. See County of Tuolumne v. Sonora Community
7 Hospital, 236 F. 3d 1148, 1157 (9th Cir. 2001) (holding “tying arrangement exists when a
8 seller conditions the sale of one product or service . . . on the buyer’s purchase of another
9 product or service”).

10 3. Defendant is entitled to judgment on the Fourth Cause of Action, by which plaintiff
11 alleges a claim for trade disparagement, in violation of 15 U.S.C. § 1125. Specifically, for
12 the reasons stated by defendant, plaintiff has failed to raise a triable issue as to whether
13 defendant made a false statement of fact about its services or about plaintiff’s services.
14 See Cook, Perkiss and Liehe, Inc. v. Northern California Collection Service, Inc., 911 F. 2d
15 242, 244 (9th Cir. 1990) (holding claim for trade disparagement requires evidence
16 defendant made “false statement of fact” about its product or plaintiff’s product).

17 4. Plaintiff’s request, included in its opposition, that the Court reconsider its order of
18 August 5, 2005 dismissing the Second and Fifth Causes of Action will be denied. Plaintiff
19 has failed to comply with the Local Rules of this District, which require that a party seeking
20 reconsideration file a motion for leave to file a motion for reconsideration and to show
21 therein a specific reason, such as the emergence of new material facts or a change in law,
22 why reconsideration is warranted. See Civil L.R. 7-9.

23 5. Plaintiff’s Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, and
24 Fourteenth Causes of Action will be dismissed without prejudice. Such claims arise under
25 state law, and the Court’s jurisdiction over such claims is supplemental in nature. Where,
26 as here, a district court has granted summary judgment on each federal claim in an action,
27 the district court, pursuant to § 1367(c)(3), may properly decline to exercise supplemental
28 jurisdiction over any remaining state law claims. See Bryant v. Adventist Health

1 System/West, 289 F. 3d 1162, 1169 (9th Cir. 2002).

2 **CONCLUSION**

3 For the reasons stated above:

4 1. Defendant's motion for summary judgment is hereby GRANTED as to the First,
5 Third, and Fourth Causes of Action. In all other respects, defendant's motion is DENIED
6 without prejudice.

7 2. Plaintiff's request for reconsideration of the Court's order dismissing the Second
8 and Fifth Causes of Action is hereby DENIED.

9 3. The Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, and
10 Fourteenth Causes of Action are hereby DISMISSED without prejudice to plaintiff's refiling
11 said claims in state court.

12 4. The Clerk shall close the file, and terminate any pending motions.

13 **IT IS SO ORDERED.**

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15 Dated: November 27, 2006

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17 MAXINE M. CHESNEY
18 United States District Judge
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